

**Graydon
Head &
Ritchey**
Attorneys at Law

EPA Region 5 Records Ctr.



275521

1900 Fifth Third Center
511 Walnut Street
Cincinnati Ohio 45202-3157
513/621-6464
Facsimile 513/651-3836

Mailing Address:
P.O. Box 6464
Cincinnati Ohio 45201

Kentucky Office:
8100 Burlington Pike
Florence Kentucky 41042
606/282-8800
Facsimile 606/525-0214

June 9, 1999

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VIA FEDERAL EXPRESS

Sherry Estes, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, IL 60604

Re: Skinner Landfill

Dear Ms. Estes:

As you may be aware, The Andrew Jergens Company entered into a de minimis settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio. In addition to providing settlement of Plaintiff's claims regarding the Skinner Site, that agreement requires certain of the Plaintiffs to seek to negotiate a de minimis settlement between The Andrew Jergens Company and the United States (on behalf of the U.S. Environmental Protection Agency ("EPA")) that is at least as protective of the company's interests as are the terms of EPA's Model De Minimis Consent Decree set forth in the December 7, 1995 Federal Register.

It is The Andrew Jergens Company's understanding that EPA, Region V has now determined what information it will order to determine that The Andrew Jergens Company qualifies for a de minimis settlement at this Site. That information consists of: (i) the summary of each de minimis settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each de minimis settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

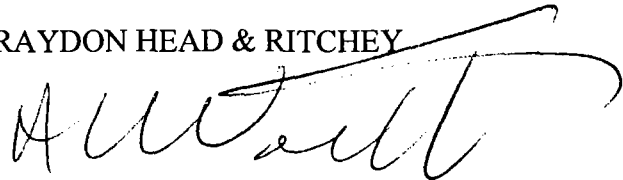
Sherry Estes, Esq.
May 27, 1999
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Accordingly, I am enclosing the information requested by EPA for The Andrew Jergens Company. I believe that this information amply demonstrates that The Andrew Jergens Company is entitled to a de minimis settlement consistent with EPA's model de minimis settlement decree. The Andrew Jergens Company understands that EPA and Plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by The Andrew Jergens Company in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, The Andrew Jergens Company does not acknowledge any liability for response costs at the Skinner Site. Furthermore, as we have previously discussed, you have indicated that The Andrew Jergens Company and the other settling de minimis defendants need not otherwise respond to the Special Notice letters previously issued by EPA.

In order to ensure that The Andrew Jergens Company is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, The Andrew Jergens Company strongly urges EPA to finalize an appropriate de minimis settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 1229(g) of CERCLA and EPA's de minimis settlement policies, as well as provide needed funds for response actions at the Skinner Site.

Sincerely yours,

GRAYDON HEAD & RITCHEY

A handwritten signature in black ink, appearing to read 'A. Worrell', written over the printed name.

A. Christian Worrell, III

ACW/kaw

cc: The Andrew Jergens Company

Andrew Jergens Corp.

Settlement Amount: **\$6,453.62**

Excerpt from Allocator's Preliminary Report :

Jergens operated a facility on Spring Grove Avenue in Cincinnati for over 100 years. It manufactures bar soaps and personal care products, primarily lotions and liquid cleansers.

Jergens is linked to the Site primarily through a letter dated June 25, 1963 from Bluford L. Moor, Chairman, Union Township Improvement Association to the Butler County Health Department. In the letter, Mr. Moor asked the Health Department to investigate the Skinner Landfill. One of the reasons for the request read as follows:

2. We understand that other chemicals almost as dangerous as cyanide are being dumped on the property. These chemicals are said to have come from the Andrew Jurgens Company, Dow Chemical Company, Globe Valve Company and Cincinnati Chemical Company. We understand that the cyanide and silver electro-chemical plating compounds are lethal enough to wipe out our whole community, under the right set of conditions.

From the letter it apparently was suggested that Jergens was the source of "cyanide and silver electro-chemical plating compounds."

Jergens performed an extensive investigation to demonstrate the absence of any link to the Skinner Landfill. The investigation is persuasive with respect to waste disposal in the 1980s and perhaps even the 1970s although I cannot tell when certain interviewees began their employment with Jergens. Transporters identified by Jergens appear to go back to the 1980s and a portion of the 1970s.

Witness testimony was, for the most part, not conclusive. Lloyd Gregory recalled a one-time event relating to the disposal of some lotion but he could not recall the source of the waste. Maria Skinner Roy recalled the name Jergens from something her mother said, did not think lotion was involved, and put the usage of the site in the late 1950s or early 1960s. Elsa Skinner mentioned a one-time disposal event linked to Jergens and lotion but could offer no other details.

Ray Skinner discussed talking with drivers from Jergens, seeing the name on the door of a truck, and perhaps as many as 35-40 disposal events over the years before 1967. He described a 7-8 cy dump truck or a van truck. As part of its position paper submittal, Jergens submitted one paragraph affidavits from two employees dating their employment back to 1959 and 1964 respectively, in which they say that they have no knowledge that Jergens ever owned or operated a dump truck. While I accept these recollections, they do no more than create issues of fact and two more deponents for the parties to depose in discovery should this matter not settle.

Jergens argues that the Moor letter is unauthenticated and inadmissible. Having worked through the record in this case, if I had any aspirations to be a federal district court judge, they have been subdued. Hence, I need not "rule" on these evidentiary issues. I pause long enough to say that should litigation discovery occur, I doubt that there would be much difficulty in finding a records custodian to authenticate the document and that Rule 803 of the Federal Rules of Evidence would appear to have sufficient breadth to permit its admission into evidence should Jergens elect to spend the money to try this case.

Having said that, the letter itself is weak proof of a sufficient nexus to the Site that, combined with the Ray Skinner testimony, would require the district court to hear the evidence at a trial. I doubt that the economics of the matter would justify that path.

I have read enough to believe that, at the end of the day, a district court judge would conclude that Jergens used the Site sometime in the 1950s or 1960s. For what and how much are the more difficult questions.

I do not assume that Jergens was the source of cyanide-containing wastes although I do note that two of the sample analytic reports from wastes in the late 1980s were reported to have contained low concentrations of cyanide. If I am reading the reports correctly, a June 16, 1986 laboratory report from PEI Associates, Inc. appears to be saying that cyanide was detected in "filtrate," "cake-precipitated" and "liquid dumpster" samples in concentrations of .05 to .11 of what I believe to be milligrams per kilograms or liter (parts per million or ppm). A June 26, 1988 report on an analysis of "coal ash" produced a cyanide level of 0.1 mg/kg.

Jergens never tells me what wastes were generated by its facility on Spring Grove Avenue. Rather, it argued that it did not generate the waste described by witnesses in the nexus package. I presume, however, from the laboratory reports that a filter cake and a coal ash were generated from time to time in the 1950s and 1960s. It also appears that "activated clay" and "animal tallow" were generated as wastes. The laboratory reports also describe a "pickle house" dumpster, a "refinery" dumpster and, as noted above, a "liquid dumpster."

I do not know whether these wastes were generated in the 1950s and 1960s, but I assume that they were. And I further assume that the Moor letter would have had to be referring to these types of wastes.

Ray Skinner's testimony cannot be read to include these types of wastes, however, since he talked about lotions and perfumes and office waste and shop clean up "stuff," sometimes in drums.

Suffice it to say that to sort through all of this, discovery would have to occur and it would be expensive. I do not have the luxury of awaiting more discovery, however. Indeed, the process has, as its goal, the avoidance of litigation costs.

Waste-in Amount. Within this context, based on all of the evidence, I have decided to use the Ray Skinner estimate to determine Jergens waste-in amount. Taking the midpoints of his testimony, I am assigning Jergens a waste-in total of 281 cys (7.5 cys x 37.5 loads).

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste in Cys	Liquid Waste in Gallons	Solid Waste in Total Cys 372906	Percentage	Liquid Waste in Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem. Dyn.	Rest of Chem- Dyne	Total
ANDREW JERGENS CORP	281	0	372906	0.0754%	262252	0.0000%	0.01%	0.00%			0.00754%